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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Paper No. 9
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Clark Refining & Marketing, Inc.

Serial No. 75/521,635

Andrew B. Mayfield of Armstrong, Teasdale, Schlafly & Davis
for Clark Refining & Marketing, Inc.

Scott D. Woldow, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Clark Refining & Marketing, Inc. has appealed from the
final refusal of the Trademark Examining Attorney to
register the mark WASH ON THE GO for car wash services.¹
Registration has been refused pursuant to Section 2(d) of
the Trademark Act, 15 U.S.C. 1052(d), on the ground that

¹ Application Serial No. 75/521,635 filed July 20, 1998, based on
Section 1(b) of the Trademark Act (intent-to-use).

applicant's mark, if used in connection with the identified services, so resembles the mark WASH-N-GO and design as shown below,

registered for "vehicle washing machines and parts therefor,"² as to be likely to cause confusion, deception or mistake.

Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

Turning first to the marks, it is applicant's position that the marks differ in sound, appearance and connotation. In particular, applicant argues that "[t]he design format distinguishes the cited mark, as does the use of '-N-' instead of 'ON THE' between WASH and GO." (Brief, p. 3).

We agree with the Examining Attorney, however, that when the marks are considered in their entirety, they are very similar. As noted by the Examining Attorney, the dominant feature of the cited mark is the literal portion, WASH-N-GO, which is the portion purchasers will remember

² Registration No. 2,125,981 issued December 30, 1997.

and use in calling for the goods. In re Appetito Provisions Co., Inc., 3 USPQ2d 1553, 1554 (TTAB 1987). The literal portion of applicant's mark is substantially similar to the cited mark. As is apparent, both marks begin and end with the same words, namely "WASH" and "GO." Although the middle portions of the marks, namely, "-N-" and "ON THE", differ slightly, when the marks are spoken, this difference is barely noticeable. Moreover, WASH ON THE GO and WASH-N-GO have the same connotation, namely a car wash that can be performed quickly so that the customer can be on his or her way.

Although we have found that the marks involved herein are very similar, an additional factor must be considered in our likelihood of confusion determination. The cited mark WASH-N-GO and design is highly suggestive of registrant's goods, and therefore not entitled to a broad scope of protection.

Turning then to the respective goods and services, it is the Examining Attorney's position that applicant's car wash services and registrant's vehicle washing machines and parts therefor are related because they both involve car washes. In support of the refusal to register, the Examining Attorney submitted several third-party

registrations which cover car wash services, on the one hand, and car washing machines, on the other hand.

These third-party registrations do not persuade us that the goods and services involved herein are related such that confusion as to source or sponsorship is likely to occur. Although third-party registrations may have some probative value to the extent that they may serve to suggest that the listed goods and services are of a type which may emanate from a single source, they are not particularly useful in this case because car washing machines and car wash services are marketed to different classes of purchasers. As noted by applicant, car wash services are marketed to the general public, i.e., owners and operators of automobiles, whereas car washing machines are marketed to owners of service stations, convenience stores, and the like. This class of purchaser is likely to be, at least, somewhat discriminating inasmuch as car washing machines are not inexpensive impulse type items.

Admittedly, it is remotely possible that a service station or convenience store owner, knowing of registrant's WASH-N-GO and design vehicle washing equipment, could perhaps wonder whether WASH ON THE GO car wash services emanate from or are otherwise associated with the same source. However, as our primary reviewing court cautioned

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in *Witco Chemical Co. v. Whitfield Chemical Co.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1960), *aff'g*, 153 USPQ 412 (TTAB 1967):

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Accordingly, when we consider the limited scope of protection to which the cited mark is entitled, the differences in the classes of purchasers and the fact that the purchasers of registrant's goods are likely to be, at least somewhat discriminating, it is our view that applicant's intended use of WASH ON THE GO for car wash services is not likely to cause confusion with WASH-N-GO and design for vehicle washing machines and parts therefor. See *In re Shipp*, 4 USPQ2d 1174 (TTAB 1987) [PURITAN and design for laundry and dry cleaning services held not likely to cause confusion with PURITAN for commercial dry cleaning equipment, since the goods and services "are not so related that they would come to the attention of the same kinds of purchasers"].

Decision: The refusal of registration is reversed.